portion of that that has the kernel of what you are now saying I will allow to be brought out.

—Tr. Tr. 3936—

Mr. Sacher: But your Honor allowed the Communist Manifesto which was written a hundred years ago. This book was written by the same man who wrote the Communist Manifesto.

Mr. Wallace: There was no objection.

The Court: You see, Mr. Sacher, no matter how you try to go at the matter it is the same old thing. I have told this jury again and again that this is not a trial of books written a hundred years ago or five years ago or any number of years ago, and if you are going to try to persuade them it is you are going to have a hard time with me sitting here because the question is did these individual defendants enter into the conspiracy which is charged in the indictment and if they used those books as paraphernalia and apparatus to serve their purpose as charged—

Mr. Sacher: To call these books paraphernalia or apparatus it seems to me is to reduce writing and books to the level of the tools of thieves, and I tell you that the culture of the world will not long survive with that approach to books.

The Court: You are not going to say any more, Mr. Sacher. You are through with your argument on this. It is the same thing. No matter how I let anybody argue it has got to go on for hours, and now Mr. Dennis is up.

—Tr. Tr. 3937—

And, Mr. Dennis, I don't desire any further argument on this point. It seems to me that the kernel of the question is plain and it has now got down to this same old business of talking, not for the purpose of persuading me on my ruling, but for other purposes. That I do not consider is proper.

Mr. Sacher: I object to that statement, your Honor.

The Court: Well, you may object.

Mr. Sacher: You are impugning the motives of counsel all the time, and I tell you that it is being made impossible—

The Court: I never heard such propaganda in a trial in my life. I am not going to have this trial carried on for the purpose of pushing out propaganda.

Mr. Sacher: I object to that. That is what the prosecution is doing. We are trying to prove the truth here and we are being estopped from proving the truth. That is what is happening.

The Court: I think not.

Mr. Dennis: If the Court please, I would like to make—

The Court: Mr. Dennis—

Defendant Dennis: —a brief observation.

The Court: —I don't desire to hear you now. I

—Tr. Tr. 3938—

really think I have heard all the argument on this that I need.

Defendant Dennis: I would like to call attention to the remarks of the Court, which could not pass unnoticed by myself or anyone. We are 11 defendants—

The Court: Do you realize, Mr. Dennis, that when the Court directs counsel not to argue something that counsel are supposed to acquiesce to the Court's ruling?

Defendant Dennis: But I also understand—

The Court: You see, lawyers very often don't agree with the Court, but they are supposed to be respectful and to follow the Court's directions. Now, that is the way we do here, and I have been trying to give everybody an opportunity, and I shall continue to try to give everybody an opportunity, to bring out what I think is relevant and proper; but where I think a matter is not relevant and proper, then I have to rule accordingly.

It seems silly for a Judge to explain to have to explain this way but I have made up my mind to be just as peaceful about this and as quiet as I can, and just as patient as I can.

And if you don't desire to pay any attention to what I am telling you, why, you go on talking.

Defendant Dennis: I would like to make one

—Tr. Tr. 3939—

brief observation, your Honor, because this is not a small question. I would like to remind the Court that we eleven defendants are not charged—

The Court: You realize I told you not to do this, don't you?

Mr. Dennis: I understood I might make a brief observation.

The Court: But you want to go on just the same. Now I don't think you are helping yourself by doing that, but that is your lookout.

Defendant Dennis: I would, briefly, like to place the following cardinal question. We eleven defendants are not charged, as your Honor intimated, charged with conspiring directly or indirectly with attempting to or take any steps to overthrow our Government by force and violence. We are charged with an alleged conspiracy to organize the Communist Party, which the prosecution claims would advocate and teach the necessity and the duty to overthrow the U. S. Government by force and violence, and that is to say, we are charged with exercising our inalienable rights of free speech, free press and free assemblage, and—

The Court: I suppose you are just daring me to do something to you now but I am not going to do it.

You gentlemen may be just as disorderly, just as

—Tr. Tr. 3940—

disobedient, just as disrespectful as you choose to be, and you will not goad me into doing something which may prove only a source of difficulty in the trial.

Now I tell you again to stop.

Mr. Crockett: I object to your Honor's remarks in so far as they imply that I have been guilty of any disorderly conduct.

The Court: Well, you have been guilty of a good deal.

Mr. Crockett: I object to that remark.

The Court: Well, you may object all you choose.

Defendant Dennis: And the final remark, your Honor, is that we defendants intend, as we are duty-bound to do, to show, really what we have advocated, what—

The Court: I will take an adjournment for five minutes.

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—Tr. Tr. 4036—

New York, April 26, 1949

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The Court: Do you see Gil Green around here anywhere?

The Witness: Yes, the gentleman with the brown suit and the curly black hair.

Mr. Wallace: Will Mr. Green stand up, please.

The Court: I think it is better if the witness goes around—

Mr. Gladstein: I mentioned this the other day. You are not dealing here with people who are ac-

—Tr. Tr. 4037—

cused of robbing a bank; you are dealing with people who are leaders of a political party of national scope whose pictures are known, whose faces are known generally.

The Court: Mr. Gladstein, do you remember my statement about objections?

Mr. Gladstein: I object to this method of identifying these men who are leaders of a political party.

The Court: Are we going to have started what we had yesterday?

Mr. Gladstein: I state my objection.

The Court: I don't see how you lawyers dare do this again when I told you explicitly that if you want to object, object. I understand the point without a lot of argument. I will overrule the objection, deny the motion, and we will proceed as one usually does in criminal cases.

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—Tr. Tr. 4130—

New York, April 27, 1949

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Mr. Crockett: I wonder if your Honor would be good enough to ask the witness to keep her voice up. I am having extreme difficulty hearing her. Would you be good enough to instruct—

The Court: Yes, I will. Have you any suggestion?

Mr. Crockett: I hesitate to give a suggestion for fear I might be accused of running your Honor's court.

* * * * *

—Tr. Tr. 4146—

Q. What was the subject of his talk? A. He reported to us on the reports made by other members of the National Board, and he told us that—

Mr. Gladstein: Just a moment, please. I want to object to that.

The Court: Well, when you say he reported, that is a conclusion. I will strike it out. What did he say?

Mr. Wallace: Your Honor, I would like to be heard on that. We have heard the word "report" used frequently by the witnesses here and I think that it has an unusual significance in Communist parlance.

The Court: Ask the witness to describe it then.

Mr. Gladstein: Just a moment. I want to move that that be stricken, this word "report" having any

—Tr. Tr. 4147—

unusual significance in Communist parlance, as Mr. Wallace says. The word "report" is a word you can find in the dictionary. It isn't used differently by anybody, whether he is a Communist or not a Communist.

The Court: A lot of other words were used here by Communists in an entirely different meaning, according to the testimony—

Mr. Gladstein: I object to that.

The Court: —which the jury may or may not believe. That is up to them.

Mr. Gladstein: I submit your Honor's statement is not correct, and I therefore—

The Court: I say it is correct.

Mr. Gladstein: I assign it as erroneous.

The Court: We have heard a lot of testimony here of words used by the Communists in these meetings and in their literature having a meaning that was different from what I would normally give

to them but whether that is so or not is a question of credibility for the jury.

Mr. Sacher: There is no testimony as to what meaning your Honor would give to any word and there is no testimony that the meanings testified would diverge from your Honor's understanding of words, and I submit we are getting involved in a

--Tr. Tr. 4148--

discussion concerning testimony here which is clearly prejudicial to the defense, and I think, your Honor, that the jury should be informed that they are the sole and exclusive judges of the credibility of the testimony and the meaning of the testimony and are not to be influenced by any observations made by your Honor as to either of those matters.

The Court: Well, I think, after I give instructions to the jury, they are supposed to pay attention to me, and if lawyers, as has been done here, attempt to argue over my shoulder to the jury and, by one means or another, try to induce them to disobey my instructions, I will not have it.

Mr. Gladstein: If your Honor please, you have just commented upon—

Mr. Sacher: Excuse me, Mr. Gladstein.

I have asked your Honor for an instruction to the jury. Instead of that you have not only not issued the instruction but have taken occasion to make an unfavorable reflection on counsel for addressing a perfectly legitimate argument—

The Court: Because you took a position in direct opposition to what I have just told the jury. I told

them there is evidence in the case that words were used which have a different meaning than ordinary

—Tr. Tr. 4149—

meaning, but it was for them to say whether they believe the testimony of the witnesses who told us that. Now, when you are argue just the opposite, and continue to repeat it, you are, in my judgment, attempting to convince the jury that I am wrong and you are right, and that, as I have told you before, is dangerous ground for an attorney to tread on.

Mr. Sacher: If the Court is wrong it can never be dangerous to point it out, I submit; and if the Court is right, then there, surely, is no danger in the matter because the Court will point it out.

I have made just one request, your Honor, and that is that the jury be advised that in matters of testimony, evidence and credibility of the witnesses, they are the sole judges and their recollection alone determines.

The Court: Yes, but you added a little something additional, which you perhaps now forget, namely, that they should disregard what I said on the subject.

Mr. Sacher: So far as their recollection is concerned, am I not correct in saying that their recollection is decisive regardless of your Honor's recollection?

The Court: I will instruct them on all those subjects when the time comes.

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—Tr. Tr. 4207—

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Mr. Wallace: Will you mark that? And this is a copy for the Court. I am delivering a copy for the Court, to the clerk, in addition to the original document, which I am asking to have marked.

The Court: Yes, I am now proceeding to read.

Mr. Crockett: I am very glad to notice that, your Honor.

The Court: What do you mean by that, Mr. Crockett?

Mr. Crockett: I take it you said it for my benefit. You looked directly at me and I wanted you to know that I had heard it.

The Court: Well, I did not look directly at you and I did not mean that for you but for all of the counsel for the defendants, who seem to be sedulously watching and clocking the time I use looking at papers and things of that kind.

Incidentally, I consider that an impertinence.

It may be assumed, when I am looking at papers, and I rule on them, that I read them, without having counsel make remarks of that character.

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—Tr. Tr. 4241—

New York, April 28, 1949

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Mr. Sacher: May it please the Court, I would like to be heard briefly on an objection to the admission of these pages 27 to 96.

The Court: I don't think I desire any argument on it, Mr. Sacher.

Calomiris—
Colloquy

Mr. Sacher: Well, apart from objections, then, permit me to say, your Honor, that the time interval I have asked for has proved to be utterly inadequate. We are not in a position to read 70 pages of historic material and to come up with a determination as to its relevancy, its pertinence to the charge and its—

The Court: You know you had Exhibit 78 in photostat form overnight. You could, with reasonable intelligence, have seen there the reference to Chapters II and III of this book. Following the procedure —Tr. Tr. 4242— that the prosecution has adopted, I should think it would have seemed almost inevitable to you that these two chapters would have been offered.

Mr. Sacher: Nothing of the kind appeared to us, your Honor, and all I know is that when reading material has appeared in outlines and we have tried to offer them, they have been sedulously kept out of the record, so we don't know what they are going to offer—

The Court: Well, I see no matter what question is discussed you always carry on in that way—

Mr. Sacher: I wish to object to that. I am not carrying on.

The Court: So I am going to let him read such pages as he wants—let us not argue. I will not have any argument about it. I will overrule your objection.

Mr. Sacher: I wish, however, to take exception to your Honor's words as to how I am "carrying on." I am not carrying on. I simply tried to state to your Honor why it was impossible for us to ad-

vise your Honor as to our position on these 70 pages, with intelligence.

The Court: Very well; the objection is overruled.

Mr. Crockett: If the Court please, I object to this entire procedure whereby some 70 pages of printed matter are offered in evidence without—

—Tr. Tr. 4243—

The Court: Do you recall, Mr. Crockett, that I ruled that there should be no argument?

Mr. Crockett: I am making no argument. I am stating my objection.

The Court: You are arguing. If you persist, you do it contrary to my direction.

Mr. Crockett: I have no desire to go contrary to the Court's direction, but I do object to this entire procedure.

The Court: Very well, objection overruled.

(Marked Government's Exhibit 30-E in evidence.)

Mr. Sacher: I just wish the record to show an objection to the admissibility of these specific pages.

The Court: I am sure the objection is noted on the record.

—Tr. Tr. 4400—

New York, April 29, 1949

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Mr. Sacher: She hasn't said that.

The Witness: I asked if I might read it.

The Court: Can you tell without reading it whether you signed it or not?

The Witness: It resembles my signature.

The Court: Don't you remember the occasion of signing a paper like that?

Mr. Wallace: Your Honor, I don't see how she can answer that without reading the paper.

The Court: Mr. Sacher says she can't.

Mr. Gladstein: But the fact is she has been reading it.

The Witness: I haven't been able—

The Court: There is so much discussion she can't read it.

You mean to tell me you can't tell whether you signed that until you read it all through?

The Witness: Yes, your Honor.

The Court: All right then, I will let you look it all through.

Mr. Gordon: Mr. Sacher thinks that this is very funny.

Mr. Sacher: I do.

The Court: He is a great fellow. There is no ques-

—Tr. Tr. 4401—

tion he can give more indication of what he thinks about by tittering and laughing and giggling.

Calomiris—Cross
Colloquy

Mr. Sacher: I move that that be stricken on the ground it is utterly unwarranted and not founded on the record and solely as a diversion.

The Court: I take it that that is intended to be another imputation on my motives, Mr. Sacher. You are piling up quite a record for yourself in this case.

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—Tr. Tr. 4588—

New York, May 3, 1949

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Mr. Wallace: I object to this, reading from a document not in evidence.

The Court: Yes.

Mr. Gladstein: I am identifying it.

Mr. Wallace: You can identify it otherwise.

The Court: You see, by reading it that way it becomes immaterial whether it is in evidence or not because you get it in anyway, which is the reason why you should not do it.

Mr. Gladstein: I cannot get the article in by referring to the title.

The Court: You can show her the paper and ask her if she has seen it before, or noticed that particular part that you want to call her attention to, without—

Mr. Gladstein: All right.

The Court: —indirectly getting before the jury something that is not yet in evidence.

Q. I will ask you to state if you find on the title page an article by Jacques Duclos?

The Court: The question is—

Mr. Wallace: That is exactly what counsel has

—Tr. Tr. 4589—

been directed not to do, and he proceeds to do it.

The Court: Yes, it is. It is, Mr. Gladstein; it is just what I told you not to do.

Mr. Gladstein: What am I supposed to do?

Mr. Wallace: I will be glad to teach you.

The Court: Show it to her and ask her if that refreshes her recollection as to whether she had not heard the name Duclos before.

Mr. Gladstein: All right.

The Court: And see what she testifies.

Mr. Gladstein: Very well.

Mr. McGohey: I assume this document has a name and there is a paging?

The Court: Yes.

Mr. Gladstein: All right.

Q. I will call your attention—

The Court: But, you see, after all this discussion, my rulings become futile. You may go ahead and do just what I told you not to do because everybody knows now the name Duclos is on there, so it is ridiculous for me to try to say anything more about that. So go ahead now, show it to her, read it all you want, and then let us see if she noticed it there before

the time that she said she heard of the name for the first time.

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—Tr. Tr. 4715—

New York, May 4, 1949

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Mr. Sacher: May it please the Court, we object to the offer of this exhibit, not on the basis of what its contents are, but on the many grounds that have already been urged as to its non-admissibility, including the fact that this constitutes surprise in view of the request made and denied for a bill of particulars.

The Court: Are you cognizant of the fact that I have directed that counsel should merely say they object and, if they desire to state reasons, ask leave of the Court to do so?

Mr. Sacher: You have my apology, your Honor.

—Tr. Tr. 4716—

The Court: Thank you.

Mr. Sacher: I did not intend to violate the ruling.

The Court: I will overrule the objection.

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—Tr. Tr. 5104—

New York, May 9, 1949

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Q. Mr. Cummings, tell us what happened at this meeting at Toledo. A. At—

Mr. Gladstein: Objection on the ground that it is all hearsay, your Honor.

The Court: Very well; overruled.

—Tr. Tr. 5105—

A. (Continuing) At this meeting Mrs. Adeline Kohl gave a report and she said that she also urged that the membership accept the National Board's resolution and during her report she was interrupted by one fellow, Mr. Paul Prosser, and he said that roughly we had estimated that the revolution in America is ten years off but due to world's conditions "I feel that it is much closer," and Mrs. Adeline Kohl said, "I agree that it is much closer. At this time due to the leadership we give the working class in America to bring about a fight for a proletarian revolution"—

Mr. Gladstein: Just a moment. I move that all this be stricken.

The Court: Why?

Mr. Gladstein: May I state the grounds?

The Court: Yes, unless you want to make a speech about it.

Mr. Gladstein: It is not a question of a speech. I haven't heard it said that any defendant was present.

The Court: I suppose you heard the news about testimony relative to co-conspirators being admissible?

Mr. Gladstein: If your Honor please, where is there a charge about co-conspirators or alleged co-

—Tr. Tr. 5106—

conspirators? These 11 defendants, as I recall what your Honor said originally, are the ones that are being tried. It is these 11 men that are being tried.

The Court: I thought you were going to make a speech.

Mr. Gladstein: Your claim is that the Communist Party is not on trial.

The Court: My claim? I suppose you have rested up for a couple of days and are now back in the arena; so you go ahead and say the rest of it.

Mr. Gladstein: Whether I am rested or unrested I am making a legal objection.

The Court: Why don't you make the argument in a legal way?

Mr. Gladstein: My ground is, in answer to your Honor's point on the question of co-conspirators, if that is the ground upon which your Honor permits this testimony in the case, then what happens to the contention that is here made, namely, a denial that the Communist Party as such is on trial and its ideas and all of its members?

The Court: If you think you are going to get into an argument with me you are just fooling yourself. I am listening to you. Go ahead and argue

all you want, but I am not going to bandy words with you.

Mr. Gladstein: I have made my objection.

—Tr. Tr. 5107—

The Court: The objection is overruled.

Q. Mr. Cumming, does Mr. Prosser, the man you say asked this question of Mrs. Kohl, hold any office in the Communist Party? A. Mr. Prosser?

Q. Yes. A. He was on the county committee at that time.

Q. Of what county? A. Of Lucas County.

The Court: Mr. Reporter, will you read that previous answer to me, the part about the revolution?

Mr. Crockett: Isn't that the part you just sustained an objection to?

The Court: If I sustained an objection to it I must have misspoken himself. I meant to overruie the objection.

Mr. Crockett: But my point is that there was a motion to strike and you overruled a motion, is that right?

Mr. Shapiro: As I recall, there was an objection.

The Court: I denied Mr. Gladstein's application, but I am going to get in my head and down in my notes what the witness said so when we get all through I am going to have it read. Don't make any mistake about that. If you want to claim for some reason or other my getting it down in my notes is improper—

Mr. Crockett: I make no such claim. I merely

—Tr. Tr. 5108—

want the record to show a motion was made to strike that particular testimony, your Honor overruled it, and now your Honor wants it read.

The Court: I want it read because I want to get it down in my notes and I am going to do that.

Mr. Gladstein: I want to object to the Court's innuendo.

The Court: Oh yes, yes.

Mr. Gladstein: In the Court's statement and the manner and tone in placing that before the attorneys for the defendants. I make that objection and I ask your Honor to advise the jury to disregard it.

The Court: Disregard what?

Mr. Gladstein: The statement that your Honor made and the implication and innuendo that it carried.

The Court: I haven't the remotest idea what you are talking about.

Mr. Gladstein: I will be very happy to tell you.

The Court: Go ahead.

Mr. Gladstein: One of the attorneys rose to ask a question of the Court and your Honor distorted that question by asking another question, the purpose of which was to convey an implication that the question of the attorney was improper, that the attorney was indeed impliedly stating something that reflected on

—Tr. Tr. 5109—

the Court's motives and the Court seized that opportunity to make that kind of innuendo.

The Court: Pretty ingenious.

Mr. Gladstein: It was; but not mine.

The Court: You are trying to throw some more imputations on my motives and showing what I thought in the first place was evidently was well justified.

Mr. Gladstein: I made an objection and I ask for a ruling.

The Court: Yes, your motion is denied.

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—Tr. Tr. 5160—

New York, May 10, 1949

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Mr. Crockett: If the Court please, I have a few preliminary cross-examination questions I would like to put to the witness on this document.

The Court: Now? I don't see any occasion for it at this time.

Mr. Crockett: In that case, then, in view of your Honor's denial of our opportunity to cross-examine the witness, I suppose all we can do is simply state we object to the receipt of this document in evidence.

The Court: I don't know what you mean by that

—Tr. Tr. 5161—

expression "all we can do." If that is some further imputation on my motives, why, I suppose I cannot very well stop it.

Mr. Crockett: It is not an imputation on your Honor's motives. It is just that it is necessary to elicit—

The Court: Why don't you just object without making these impertinent comments?

Mr. Crockett: Because when I object I like to do so intelligently and, in order to lay the necessary basis for my objection, I want to cross-examine the witness.

The Court: Well, I have denied that right as I see no occasion for it.

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—Tr. Tr. 5260—

New York, May 11, 1949

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The Court: Let the record show that the jury is present and the defendants and the attorneys for the defendants, with the exception of Mr. Sacher, Mr. Isserman and Mr. McCabe, concerning whom a stipulation is in course of signature and filing, and the attorneys for the Government are present.

Now the other day I said that I was having an examination and study of the record made as to the amount of argument made by defense counsel and I find that of 8860 pages of record from January 17 no less than 1554 pages represent argument by defense counsel, not counting the testimony, what was said by the attorneys for the Government, or by myself.

Now you may proceed, gentlemen.

Mr. Gladstein: Just a moment, your Honor. May I ask the purpose of the Court's announcement?

—Tr. Tr. 5261—

The Court: Yes, you may.

Mr. Gladstein: And I do.

The Court: Now you know I have been required according to my view of the matter to rule that the attorneys for the defendants should merely state "I object" and not give any reasons or argument without leave of the Court. There have been various protests of one kind or another by you and your colleagues, and I thought I should have the record show the fact that I have just indicated.

Mr. Gladstein: I submit in the first place that any such announcement by the Court under the circumstances is improper.

The Court: Well, I suppose that is some more judicial misconduct.

Mr. Gladstein: I submit that it is misconduct and that it is improper. In the second place, I want to ask your Honor whether the 8860 pages your Honor refers to covers that portion of the case involving the challenge to the array?

The Court: Certainly it does. It includes everything from January 17th.

Mr. Gladstein: Then I submit the injustice of the remark is compounded. I submit it was improper for your Honor to make that statement.

—Tr. Tr. 5262—

The Court: It would have been better if you hadn't argued so much.

I have had perfectly good reason as anybody could see or observe for making my ruling, and you remember only yesterday although I again indicated that you should only state "I object" and then ask my leave to argue you went ahead arguing and then when I asked you whether you had forgotten my ruling in the matter, why; you rather hemmed and hawed and said very little, and I thought I better put this statement on the record, and there it is. You protest against it?

Mr. Gladstein: I assign it as misconduct.

The Court: You say it is judicial misconduct?

Mr. Gladstein: I assign it as misconduct and I ask your Honor to instruct the jury to disregard it.

The Court: I will instruct the jury when I come to it, if that time comes, as I have instructed them in the beginning of this trial, and I may have occasion to do it again.

Mr. Gladstein: My request—

The Court: Wait until I tell you what I am going to tell them—what I am telling them now.

Now ladies and gentlemen of the jury, you remember earlier in this case I told you that you were to decide this case on the evidence that you get from

—Tr. Tr. 5263—

the witness stand and the exhibits that are put in. Don't permit anything that is said or done by defense counsel or any colloquy that I may have with them in such matters affect your judgment in any manner whatsoever. That is not evidence; it has got nothing to do with your determination and rendering of a verdict in this case. And so to that extent I tell you

pay no attention to what arguments may be advanced or what may be said by defendants' counsel except in so far as they bear on your determination of the facts, and similarly disregard any comments that I make and colloquy that I have with them. Those things aren't evidence.

You are going to decide this case, if I ultimately submit it to you for your consideration, upon the evidence that comes in and on nothing else. And when lawyers argue, as they will at the close of the case, you will naturally pay careful attention to all those arguments as they may, and doubtless will, help you in your determination of the verdict based on the evidence.

Mr. Gladstein: Now I want to assign the remarks of the Court as misconduct for two reasons—

The Court: You mean what I have just said?

Mr. Gladstein: Yes, your Honor. In the first place

—Tr. Tr. 5264—

because your Honor singled defense counsel out very noticeably.

The Court: I did not intend to do any such thing. I am talking about all the counsel here.

Mr. Gladstein: Well, I may point out, your Honor, that Government counsel was conspicuously omitted from your remarks, but more important than that—

The Court: Well, I include them now.

Mr. Gladstein: Your Honor, my assignment of misconduct was at the remarks of the Court, and I therefore submit it was improper for the Court in making—in giving any instruction to the jury on that subject, to do so in the manner that your Honor just

did, and I assign therefore your remarks as misconduct.

The Court: Well, I must be very bad, all these misconducts that you have charged, and, I must say it is very sad.

(Defendant Dennis stood up.)

The Court: Now what have you to say, Mr. Dennis?

Defendant Dennis: I would like at this time to move for a mistrial because it seems to me that the remarks of your Honor are judicial misconduct, so highly prejudicial that it is impossible to obtain a fair trial, and I would call to the Court's attention that your observations here are not only directed

—Tr. Tr. 5265—

against counsel of the defense and the attorneys per se, and incorrectly, in my judgment, unjustly, but they are also directed against the defendants and in effect deprive the defendants who are represented by various counsel from a general and adequate and full representation.

The Court: You remember the day, Mr. Dennis, when you faced me up and down and refused to stop arguing and I had to leave the bench for five minutes, so that you could cool off a little bit, and then I came back and you stopped? Do you remember that day?

Defendant Dennis: I remember the day but I don't join in the interpretation which—

The Court: Do you remember me telling you to stop arguing again and again and you went right on—

Defendant Dennis: I also remember, your Honor, that you stated if I wished I could continue, and I did continue and it would seem—

The Court: Well, your recollection is a little bit different from mine; but, anyway, when I tell the jury, as I did just a moment ago, to disregard those things, to disregard the conduct of counsel and not permit it to prejudice them in any way against the defendants, not to consider such matters against the defendants, I gave that instruction to help them, not to hurt them as you seem to suppose.

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—Tr. Tr. 5310—

Mr. Crockett: If the Court please, may I make a statement on the record? I notice that Exhibit 119 has just been collected from the jury. I also notice that at 12.17 the original was given to the jury. At 12.20 a photostatic copy was also handed to the jury, and at 12.29 the jury completed its consideration of that 9-page document.

The Court: Well you know, that is like this timing of me that you had been doing earlier in the trial. Now you know some people read faster than others. Some people read one part or another part, and I don't see why you have such things as that noted. I didn't watch to see whether your statement is substantially accurate, but I think that the jurors have the right to look at such parts of the exhibits as they desire to look at. It isn't necessary for them, each one, to read every word of the papers. I don't think you ought to do that.

Mr. Crockett: Your Honor, I point out the impossibility of any juror giving adequate consider-

ation, within the time limit, to all of this documentary stuff that the Government is putting into evidence.

The Court: Well, I note your objection, or whatever it may be considered, but I don't see any difference in this trial from others, and the jurors may look at the exhibits to the extent that they desire

—Tr. Tr. 5311—

to look at them.

(Mr. McGohey rises.)

The Court: Yes, Mr. McGohey?

Mr. McGohey: May I point out to your Honor that this Exhibit 119, which is the subject of Mr. Crockett's observations, that at the time it was received Mr. Shapiro read the first—read to the jury the first half of the first page; he omitted the second page, the third page, and a half of the fourth page, and that thereafter he read everything else in the exhibit except these two tables—or one table, rather.

The Court: Yes. It is reasonable to suppose that the jurors remember at least a part of what Mr. Shapiro read.

Mr. McGohey: I should think so, your Honor—

The Court: Yes.

Mr. McGohey: —in view of the fact that it happened only a very short time ago.

The Court: That is right. I think if there is going to be some timing, Mr. Crockett, you had better let me know when the timing is going on and I will do the timing, or have the clerk do it, because I didn't know you were doing that and I don't like to have

counsel make statements that I have no way of checking at all, and I think if you are going to do some

—Tr. Tr. 5312—

timing you had better let me know and then I will do the timing.

Mr. Crockett: May I suggest to your Honor that both of us be relieved of that responsibility and let the court reporter be directed by the Court to mark on his record the time that each time passes.

The Court: I certainly will not make any such direction. I never heard of such a thing.

Mr. Crockett: In that case I will have to interrupt the proceedings to let your Honor know that I am taking the time.

The Court: Well, it is perhaps better to let you time it, whenever you want, and you can make such statement as you want, and the jury may give it such consideration as they think it deserves. I will take back what I said about telling me when you are doing the timing. You can do the timing any time you want, on me, on Mr. McGohey, on the jurors, on the witnesses or anyone else, and then you can make such statement as you need to and we will let it go at that.

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—Tr. Tr. 5361—

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Then, going over to the last section of the exhibit we find that it is headed "Concentration Objectives.

"The building and strengthening of following 22 club"—

I assume that means "clubs"—

"in basic industries and key plants as state concentration objectives. (See A) below).

"The fulfillment of our concentration goals must serve as the main measure of the success of our party work. They must receive top priority in terms of the human and material resources of our Party. (See B) below).

"A) Concentration Points:

Cleveland—White Motor, Republic, Lorain, Alcoa, G. E."—

and undoubtedly that is General Electric, your Honor—

"Youngstown—Republic, S. & T."—

undoubtedly standing for "Sheet & Tube"—

Mr. Gladstein: Your Honor, it seems to me—I don't know about this "undoubtedly" business, but I think it may be well—

The Court: I think you had better leave out the

—Tr. Tr. 5362—

description.

Mr. Gladstein: Or ask that of the witness.

The Court: Yes, I think that's right. I think the GE—it seems plain to me, but it may not be. Better ask the witness if he knows and then, if he doesn't, prove it in some other way.

Cummings—Direct
Colloquy

Mr. Gladstein: Well, of course, asking the witness those questions now, I think, is hardly worthwhile. I would suggest in the future—

The Court: You mean that the witness will lie because he has heard this discussion and make out that he knows when he doesn't? Do you mean that?

Mr. Gladstein: I object to that.

The Court: If you mean that, you are wrong.

Mr. Gladstein: I object to that statement of the Court.

The Court: I won't have this kind of talk. Every time there is a witness on the stand you say, because there has been a discussion and he has heard the discussion that, of course, he will lie about it.

Mr. Gladstein: I didn't say that, and I object to the statement—

The Court: That is what you meant.

Mr. Gladstein: —in the presence of the jury and assign the manner and the contents of your Honor's

—Tr. Tr. 5363—

statement as prejudicial misconduct.

The Court: Very good.

Mr. Gladstein: And I ask your Honor to advise the jury to disregard the expression—

The Court: Witnesses do not have to be insulted here.

Mr. Gladstein: Your Honor, may I finish my assignment of error?

The Court: Oh yes, you can go ahead and call me anything more that you want to. I am used to it by now.

Cummings—Direct
Colloquy

Mr. Gladstein: And I assign that as error because I did not call your Honor anything, and I also assign as prejudicial misconduct the statement your Honor just made to the effect that I was saying something about the witness, which wasn't true. Now, I ask your Honor—

The Court: When you say that I make statements that are untrue, you transcend the bounds of propriety of conduct of members of the bar.

Mr. Gladstein: I didn't make that statement, if your Honor please.

The Court: Well, I just heard you make it. What's the use of telling you didn't?

Mr. Gladstein: I submit the Court's last remark is prejudicial misconduct.

Now, I ask that the Court instruct the jury—

—Tr. Tr. 5364—

The Court: Next thing you will be saying what I am thinking is prejudicial error.

Mr. Gladstein: I beg your pardon?

The Court: I say, the next thing you will be doing is saying what I am thinking is prejudicial error.

Mr. Gladstein: I assign the statement that your Honor just made as prejudicial error, and I ask your Honor to advise the jury to disregard that statement as well as the others, concerning which I have made an assignment.

The Court: Well, I make the same direction to the jury that I made this morning. These little passages between counsel and myself, whether they be counsel for the defendants or for the prosecution, do not

form evidence in the case. You are not to base your verdict upon such matters at all. You are entirely to disregard them and to base your verdict, when the time comes, upon the evidence that you receive from the witnesses and in the documents that are submitted.

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—Tr. Tr. 5440—

New York, May 12, 1949

Q. Now was there any discussion at that time about your compensation for being a stoolpigeon? A. No, no—no discussion about compensation for being a stoolpigeon was being discussed.

The Court: He didn't say "Now you stoolpigeon, you are going to get so much."

The Witness: No.

Mr. Gladstein: Now, if your Honor please, I object to the Court's remarks and the form in which this is put. May I say that I do not regard it as a matter that warrants levity on the part of the Court to ask that sort of a question and present that kind of interference when the subject being discussed—

The Court: Did you hear the question that Mr. Crockett asked?

Mr. Gladstein: —of being a stoolpigeon. Now I heard the question that your Honor asked—

The Court: No.

Mr. Gladstein: —which I submit was improper, and I ask your Honor to advise the jury to disregard that. Your Honor constantly interferes with

cross-examination in a manner that is intended to take the edge off the examination, a statement which I have heard your Honor make against us. Now I want to say this—

The Court: You naturally don't want to have any-

—Tr. Tr. 5441—

thing go by without telling me about my judicial misconduct.

Mr. Gladstein: Your Honor, if—if in my judgment with whatever wisdom God has given me and whatever experience I have, I think that the defense of my clients requires me to stand up and object to a statement that I believe sincerely to be improper on the part of the Court, then it is my duty and my job to do so, and I offer no apologies for doing that, and therefore as long as your Honor continues to present that kind of interference, to try to make light of the subject of spying, whether it be upon unions or political organizations or any kind of organizations and to try to take the whole cross-examination—

The Court: I suppose you will be some little time arguing this point, will you?

Mr. Gladstein: Your Honor, I had not intended to make any argument.

The Court: Well, you see it is always that way, you do not intend to do it but then you go on and on. What you meant to do and what you did was to object to my question, to ask that I instruct the jury to disregard it, which I refuse to do.

Mr. Gladstein: And I assign—

The Court: Now the rest of it becomes, as I look at it, argument, which I have sought to avoid here.

—Tr. Tr. 5442—

Mr. Gladstein: Well, I shall refrain, but I want to assign your Honor's remarks as misconduct, and also the rulings of the Court as misconduct.

The Court: Well, I am getting used to that now, so it is all right.

Mr. Gladstein: I assign the remarks that your Honor has just made as misconduct.

The Court: But I am getting used to it.

Mr. Gladstein: Your Honor, whether you are used to or not used to having the remarks of the Court assigned as improper has nothing whatsoever to do with the issue of law presented by an attorney when he makes an assignment of error, and I submit that for your Honor to constantly use that kind of expression in the presence of the jury has the effect of making it impossible to obtain a fair trial. Now I am not saying that your Honor intentionally makes the statements to deprive the defendants of a fair trial, but I do beseech your Honor to consider that, in my judgment at least, and in the judgment of the defendants and the other lawyers, it becomes impossible as a matter of fact to have fair play with your Honor constantly making this kind of remark.

The Court: Well, Mr. Gladstein, I have determined that this trial is going to be held in an orderly

—Tr. Tr. 5443—

and proper way, and I don't intend that a single one of you lawyers for the defense shall get away with anything while I am sitting here. I am not

going to do any shouting or thumping or holding people guilty of contempt or doing anything that will make a big rumpus, but I am not going to let a single one of you get away with a thing, and every time there is some little crack you will find that is the time that I speak up, because I am not going to let you gentlemen take over the courtroom as you have repeatedly tried to do. Now that's all beside the evidence. It has got nothing to do with what the jury has to decide at all. You need have no concern that they will mistake it because they will not.

Now please let us go on with the cross-examination.

Mr. Gladstein: All of your Honor's last remarks I assign as judicial misconduct. I ask your Honor to advise the jury to disregard it.

The Court: I refuse to do so.

Now go ahead, Mr. Crockett.

By Mr. Crockett:

Q. I believe you testified that nothing was said about compensation at the time of this fourth visit in January 1943, is that right? A. That's right.

—Tr. Tr. 5444—

Q. But you did agree to become a stoolpigeon for the FBI?

Mr. Shapiro: Objection, your Honor.

The Court: I will sustain the objection.

Q. You did agree to become an informer for the FBI?

Mr. McGohey: I object to that.

The Court: The same ruling.

Mr. Crockett: Your Honor, what is wrong about the word "informer"?

The Court: Well, are you just trying to start this thing again so that then Mr. Gladstein will get up and so we go to it—

Mr. Crockett: Now I want to object to that.

The Court: You have already asked what was said; you got it all out here. Now I am a little bit inclined to think there is a little bait around here now, and I think you had better just drop that and go on and ask a question that I allow. I have sustained the objection to the last two questions.

Mr. Crockett: I want to object to the Court's remarks.

The Court: Very well.

Mr. Gladstein: May I interrupt a second? I want to assign as misconduct on the part of the Court the remarks of the Court concerning bait.

—Tr. Tr. 5445—

The Court: Well, I am apparently the one that the bait is held out to most of the time and I don't intend to take it.

Mr. Gladstein: I ask your Honor to advise the jury to disregard the remarks that your Honor made concerning the spreading around of bait, or whatever your Honor's expression is.

The Court: Well, it does seem to me, Mr. Gladstein, that you and your colleagues, not just today,

not just for a week or two, not even for a month or so, but for several months have been trying to bait me. Now I have told you repeatedly that it is useless. You are not going to provoke me. You are not going to get me angry about it. I just won't do it, but I think it is about time to stop that sort of thing. Now you have tried it again and again by talking about stoolpigeons, and so on and so forth. Now he has already got out what happened in this conversation, and I have sustained the objection to the last two questions which had the words "stool-pigeon" and the word "informer" in and which seemed to me to be just matter of provocation, and so we will go on.

Mr. Gladstein: Your Honor, I assign as misconduct the remarks that the Court has just offered concerning what has gone on the last month or the

—Tr. Tr. 5446—

last two months, or anything of that sort.

The Court: Well, we all know what it is.

Now go ahead, Mr. Crockett.

Mr. Crockett: I should like to remind the Court that this witness has previously testified that he agreed to become a quote informer end of quote for the FBI.

The Court: Then why did you have to ask such a question? That puzzles you, doesn't it?

Mr. Crockett: Shall I answer that, your Honor?

The Court: Well, you may if you choose.

Mr. Crockett: Perhaps under the circumstances I

had better not.

The Court: Well, I will take the thought for the deed.

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—Tr. Tr. 5460—

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Q. You have never reported to the Federal Government the moneys that you received from the FBI? A. I did not. Never have reported.

The Court: Why should he, Mr. Crockett?

Mr. Crockett: Let me object, first, to your Honor's question, and unless your Honor—

The Court: The question rather seems to indicate that there was a duty under the law to include those things and, as I understand the income tax law, you do not put in your return when you are reimbursed for expenses, you put down your earnings, your income, and I thought perhaps you had some theory about this that might enlighten me, and so I said, "Why should he put them in?"

Mr. Crockett: I want to object to the last statement.

The Court: Is it possible that you will get around to answering my question in due time, "Why should

—Tr. Tr. 5461—

he put them in?"

Mr. Crockett: If your Honor directs me to answer the question, I will do so.

The Court: I don't give you any direction. I am just asking you. If you don't want to answer it, why,

we have had enough of that before, I am used to it.

Mr. Crockett: In that case I consider the question an improper one coming from the Court at this time—

The Court: All right.

Mr. Crockett: —and for that reason I don't answer.

The Court: Very well.

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—Tr. Tr. 5725—

New York, May 17, 1949

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Mr. Sacher: I would like to make the point, your Honor, I wasn't concerned about the smile but I think it is a matter of the utmost gravity for a man to recruit his brother-in-law into the Communist Party and then report that fact to the FBI.

Mr. McGohey: Now I object to that, your Honor. That is a matter for summation.

Mr. Sacher: That is no smiling matter.

The Court: Now, Mr. Sacher, you are beginning to make comments that are not proper, and I have told you again and again that the time to argue is when you come to your summation. Now I am just not going to tolerate that sort of thing, and I hope you will bear it in mind.

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—Tr. Tr. 5808—

New York, May 18, 1949

Mr. Sacher: I object to this, your Honor—

The Court: Overruled. Mr. Sacher, I will not hear from you further.

Mr. Sacher: —unless the time and place are fixed, your Honor.

The Court: Overruled. You needn't smile and sneer at me that way either.

Mr. Sacher: I wish to state that I did not sneer or smile.

The Court: I am not going to have any more of that than I can help, I will tell you that.

Mr. Sacher: That is all right, but I just wish the opportunity to state my objection properly.

The Court: Well, will you please try to control yourself.

Mr. Sacher: Well, there is no need to control myself. I stated an objection.

The Court: I saw you smile and sneer, and you have done that repeatedly and I won't have it

Mr. Sacher: I think that is not a correct characterization of what I did.

The Court: Well, naturally you wouldn't be expected to admit it.

Mr. Sacher: I object to that statement.

The Court: Very well.

—Tr. Tr. 5826—

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The Court: Overruled. And I may say, Mr. Sacher, that I have observed lately some disposition to do what I thought was to delay the proceedings here, and I am contemplating the taking of some steps to expedite the case.

Mr. Sacher: Does your Honor make that observation in light of objections made to questions asked?

The Court: I do.

Mr. Sacher: May I note an objection to your Honor's observation?

The Court: No, you will have just what I stated and bear it in mind. I am not going to have this matter go on forever, and I am, just as I have on numerous occasions before in this case, giving you and your colleagues ample warning, and I tell you now, as I did a moment ago, I am contemplating certain steps to expedite the matter. Now you may just think that over, and I am not going to say anything further about it now, but when I do take those steps I hope you will not feel surprised.

(To Mr. Dennis, who was standing) Now, yes, Mr. Dennis, what have you to say?

Defendant Dennis: Is your Honor trying to intimidate the defense and counsel for the defense?

The Court: I am afraid I am not very good at

—Tr. Tr. 5827—

intimidation, but I have had a lot of it tried on me in this case.

Defendant Dennis: What is the purpose of your threat?

The Court: My purpose is to indicate, as I said, that I have observed a number of things here which have impressed me as having been done solely for purposes of delay, perhaps to drag out this case for an indefinite period; and before I do anything further than what I have already done in that matter, I thought it well to give counsel some warning because it is the conduct of counsel that has caused me to reflect on the matter, and so I have given this indication.

Now, for example, I have observed as to exhibits, that an extremely long period is taken for the passing around of the exhibits, turning them over and over and passing them around, and 20 minutes or a half hour go by; and it seems to me that perhaps we can be a bit more expeditious.

Now that is all there is to it. If there is something you wish to say you may say it.

Defendant Dennis: Well, I can only construe the remarks of the Court as highly prejudicial to counsel and the defendants, as an effort to try and intimidate us; but I can assure the Court that we of

—Tr. Tr. 5828—

the defense are not going to be intimidated.

The Court: I don't think you can be intimidated, Mr. Dennis.

Mr. Dennis: I am glad the Court understands that.

Mr. Sacher: I should like to place on the record the fact that your Honor said to me that you would commend the defense because of the manner in which cross-examination was being expeditiously conducted.

The Court: Did I say that?

Mr. Sacher: Yes, you did.

The Court: Well, the record will speak for itself.

Mr. Sacher: And I mention that only because it seems to me that having complimented us on the expedition with which we were acting that it seems, particularly in view of the fact that your Honor was handing out the admonition on the basis of objections made this morning and your reference to the examination of exhibits in your colloquy with Mr. Dennis, I don't understand it; and I should like also to add that never in this case, never, lengthy as the exhibits have been, has the defense taken as long as 20 or 30 minutes to examine exhibits.

The Court: Well, you see, issues of veracity between the Court and counsel are distasteful but when they occur we must meet them. Now let's drop the subject and go on.

—Tr. Tr. 5829—

Mr. McCabe: I should like to put on the record my objections to the strictures as to any lengthy examination of exhibits by counsel. There are eleven defendants and five counsel, and I believe if we have erred we have erred to the point of shortening our examination of exhibits, except in some cases, to the detriment of our clients. The Government is never censured nor does it hasten the examination of its exhibits.

I say, this morning, your Honor, after giving this warning, which I think is—

—Tr. Tr. 5830—

The Court: You know, I have given a number of similar warnings in the past in this case, and in every such instance I acted when I was forced to act. Now you can go ahead and talk if you wish to, but I think it is more profitable for you to just ponder on what I have said and guide your conduct accordingly. Now why don't you take that to heart, Mr. McCabe, and think about it. You have had a nice rest, you have been away for a few days or a week or so. I think if you will just take it easy and let's go on it will be better.

Mr. McCabe: Your Honor, I have not been away for a rest, nice or otherwise.

The Court: Let's argue about that then.

Mr. McCabe: If your Honor chooses to take testimony on that it is readily available. But I would like to call your Honor's attention to the fact that today after stating an admonition you said that your remarks were directed to objections taken and you immediately digressed from that and you go back to a point of examination of the exhibits when certainly that is not directed to anything that happened today.

The Court: I didn't confine my remarks to objections at all. As a matter of fact the objections were one of the rather less important items. But when Mr. Sacher questioned me about that I naturally

—Tr. Tr. 5831—

said yes the objections had something to do with it because I have observed particularly on the direct

examination of witnesses when they are getting into their testimony there is such a barrage of objections and interruptions that it can scarcely seem believable to me that if counsel simply wishes to make a record of an alleged error that such repetition would be necessary, but perhaps it may be. All I am telling you is you better watch your step.

Mr. McCabe: We have asked, your Honor, that our objections be directed to an entire line of testimony when it is obvious that the objections would be similar to various phases of that testimony. Your Honor declined.

The Court: That is right, I take no blanket objections. I am going to pass on things as they come up.

Mr. Sacher: What is the alternative, your Honor?

The Court: As I understand the law, Mr. Sacher, if you object on one point and get an adverse ruling that exception is just as good as a thousand.

Mr. Sacher: Why don't you permit the objection to stand?

The Court: I will not take a pig in a poke by saying I will allow an exception to some general line because my experience has been that that is unprofitable and led to misunderstandings.

—Tr. Tr. 5832—

Now you see what little things lead to so much discussion?

Mr. McCabe: This is not a little thing. This has gone on throughout the entire record.

The Court: It is due to the fact that you lawyers keep this up as you are doing, which is some further evidence in my mind that you want to keep this ball rolling indefinitely in this case.

Mr. McCabe: That has no basis in fact, your Honor; but the fact is, if we sat here and allowed your Honor's strictures to go on the record without comment, someone, even a jury, might get the idea that we accepted those strictures or agreed with your Honor, and I have said—

The Court: You know, the jury has been told by me repeatedly that these little colloquies have no bearing on the issues that they have to decide and they are to put them out of their minds entirely.

Defendant Potash: The jury consists of human beings, your Honor, and you cannot say that they will just disregard that.

The Court: This is Mr. Potash, isn't it? Isn't this Mr. Potash?

Defendant Potash: Yes, this is Mr. Potash.

The Court: You seem to be of the same general

—Tr. Tr. 5833—

character as your colleague Mr. Gates there, but is there anything else you wish to say?

Defendant Potash: No, that is all I have to say, your Honor.

Defendant Green: I would like to say something, your Honor.

The Court: Now, let me see—

Defendant Green: It seems to me your point of view—

The Court: —this is Mr. Green, isn't it?

Defendant Green: Yes, this is Mr. Green.

The Court: And you have some comment that you don't desire to leave to your lawyer to make, is that it?

Mr. McGohey: Would your Honor hear me for just a minute?

The Court: Yes. Mr. Green, would you mind, just as a favor, to resume your seat for a moment until I hear from Mr. McGohey?

Yes, Mr. McGohey.

Mr. McGohey: If the Court please, I would like to move at this time, if I may, for a short recess.

The Court: Very well. We will take a ten-minute recess.

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—Tr. Tr. 5883—

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Mr. Sacher: I object to that as being a repetition—an unnecessary repetition of the testimony.

The Court: Sustained.

Mr. Sacher: That was sustained, your Honor?

The Court: Yes.

Mr. Sacher: I am agreeably surprised.

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Colloquy

—Tr. Tr. 6025—

New York, May 19, 1949

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Mr. McGohey: And at this time the Government rests.

Mr. McCabe: Will your Honor indulge us?

The Court: Would you like me to take a ten-minute recess now?

Mr. McCabe: Yes, I think so. We will have some motions to make.

The Court: Do you think that the motions will require much argument? Do you desire time for argument? Because I don't think that such motions should be argued in the presence of the jury.

Mr. McCabe: No; I agree.

The Court: And I was wondering how long you expected to take on that.

Mr. McCabe: Well, inasmuch as there are a number of counsel, your Honor, I think the time to be taken might be determined by some agreement among them as to the burden of argument on some particular points which might shorten the argument.

The Court: Well, I will tell you what I will permit you to do. I will permit you to use the balance

—Tr. Tr. 6026—

of the afternoon for such arguments as you desire to present, severally or in any order that you desire. I will now excuse the jury until tomorrow morning, and then I will take a little recess so that you can prepare to make your motions and your argument.

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Colloquy

—Tr. Tr. 6033—

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The Court: I will give no time in addition to what I have indicated, namely, you will make your motions, make your arguments in support of the motions this afternoon.

Mr. Isserman: Now if the Court please, I am aware of what the Court just said but I do feel it neces-

—Tr. Tr. 6034—

sary on behalf of my clients to call to the Court's attention certain aspects of this case which do require the short time that we are asking to get our motions in proper shape for your Honor. I would like to say that the very motion papers on which we have been working and which are not completed but which would aid in the course of our argument are not in court at this point.

The Court: Well, these motions are usually made orally.

Mr. Isserman: And they are being worked on, and the cases that we have in support of them are not in court. I would like to call your Honor's attention also that in the course of the trial, in addition to the number of pages of testimony which have been taken, that the exhibits number somewhat in the neighborhood of 300; that many of them are whole volumes which have to be considered, that none of them were introduced with the exception of maybe one or two, or the constitution mentioned in the indictment, without prior notice to the defen-

dants which they had requested by way of a bill of particulars; that many of the witnesses were produced outside of the Southern District, which also was a matter of surprise, and we so alleged, and again there was timely demand for a bill of particulars which was denied; that to meet the testimony of these witnesses requires more time than

—Tr. Tr. 6035—

we have had up to this point, and while the process of obtaining that testimony is under way, it has not been completed, we had no opportunity to get ready until the witnesses themselves were on the stand and testifying because of the absence of particulars. The study of the documents put in, and the analysis of the testimony which we have been doing requires some additional time for us to make the motions which as a matter of due process we should be entitled to make now, in a way, to present them to the Court as persuasively as we can without undue repetition and without any suggestion of delay, the basic problems of law and fact which have been raised in this case.

I would like to say in addition to the motion for direction of a verdict—or for judgment of acquittal, rather, there is a motion addressed to the dismissal of the indictment on constitutional grounds which your Honor at an earlier stage indicated will be entertained at this point. Now we had no way of anticipating that the Government would rest at this point, and it is not unusual and quite within the course of procedure on a set of facts which involves eleven defendants and five trial counsel to give them

an opportunity, and involving so many—so much documentary material which has been put in—to

—Tr. Tr. 6036—

give them a reasonable opportunity before the submission of their case to present their motions and also to do that additional minimum of preparation needed in connection with the witnesses and matters on which we have been surprised in this case, through no fault of our own, and to compel us, without giving us the short time that we are asking—and in respect to that we do not hold necessarily to the time suggested by Mr. Sacher, but a short—but we do believe that it is within our clients' rights as a matter of due process that there be some reasonable period in which we could prepare these motions and prepare to put our defense on, and we ask your Honor to reconsider the statement that you have just made.

It is a matter of grave importance. The charge is a novel one. It affects—it embraces fundamental constitutional issues, and issues which are of the greatest importance, and under the circumstances, especially and in view of the fact that but a short few minutes remain until the close of this day's session, and there is a half day tomorrow—

The Court: Well, you are using it up yourself asking for a delay.

Mr. Isserman: What did your Honor say?

The Court: I said you are using the time up your-

—Tr. Tr. 6037—

self in order to get this delay that you are seeking.

Mr. Isserman: We are not asking—

The Court: Remember, I have been through this here.

Colloquy

Mr. Isserman: If the Court please—

The Court: I remember the applications for delay, delay, delay, delay, right through all this whole proceeding.

Mr. Isserman: If the Court please, we are not asking for a delay. We are asking for that reasonable adjournment which as a matter of due process we are entitled to.

The question of examining the record in the light of your Honor's rulings that certain parts of the evidence were admissible as to certain defendants, and certain evidence was not admissible as to certain defendants, and certain evidence as to all, requires a short opportunity to present the matters to your Honor, and we believe we have that right to present the matters to your Honor both as to fact and law which may persuade your Honor to act on our motions in a favorable way, and not to treat them merely as motions—

The Court: I haven't even heard them yet. What are the motions?

—T. Tr. 6038—

Mr. Isserman: Well, we expect to make them, and we ask your Honor—

The Court: You want to make them when you want to make them.

Mr. Isserman: No, that isn't so, your Honor. We ask for a reasonable time in which to make them.

The Court: And what did I say?

Mr. Isserman: And I wish to note that the papers that we have prepared on which our motions are based are not in the courtroom at this time. We say that it is a denial of due process of law.

The Court: Well, you still have your head on your shoulders. Generally you speak at some length with fluency and without difficulty. You can make the motions orally. That is what is usually done.

Mr. Isserman: I wish to say that it is a denial of due process to compel us to proceed with motions at this time. In this kind of a case and under all the circumstances of the case we ask your Honor to consider that a short adjournment would be in the interests of justice and would cause no inconvenience or difficulty or hindrance of justice in any way whatsoever on an issue of this kind, and I have been in cases which have had some part of the magnitude of this case, and it has not been unusual for the Court in its sound discretion and considering the

—Tr. Tr. 6039—

needs of the defense to allow a short period of time for the preparation of motions. This is especially true when there are a multiple number of defendants, with complicated issues of law and fact and a number of trial counsel, and I ask this Court in the interests of justice and due process to reconsider the Court's decision and to grant us a short adjournment so that we may adequately prepare the presentation that we feel necessary to make.

The Court: I am wholly at a loss to see what argument you can have to indicate to me that the Government has not made out a prima facie case. The evidence that has been produced has been of such a character that it seems to me there is very little room for discussion on the point. How I could fail to submit this case to the jury on this evidence I

don't see; but if you are going to make any motions you better get busy.

Mr. McGohey: If your Honor please, I desire to ask that the record show that the Government rested at 3.15; that there was then a request for a recess by counsel for the defense; that the Court reconvened at 3.35 for the hearing of the motions as the Court had directed.

The Court: Yes.

Mr. Sacher: Does Mr. McGohey care to indicate

—Tr. Tr. 6040—

that it is now approximately 3.50 also?

Mr. McGohey: I shall be glad to do that if it will be understood that from the time we reconvened until now has been taken up by arguments for adjournment rather than the motion to dismiss.

The Court: Yes, that is right.

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—Tr. Tr. 6047—

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Defendant Dennis: I must say, the first thing that must be noted in respect to directing counsel to conclude any arguments or proffer any motions by 4.30 this afternoon makes a mockery of justice, because, by this ruling and by the injunction that defense must produce its first witness by tomorrow morning, your Honor has stated, in effect, that irrespective of what motions we offer that you cannot be convinced that there is no prima facie case.

The Court: Let me ask you a question—

Defendant Dennis: And, moreover, that you have prejudged this case.

The Court: Let me ask you a question: Do you conceive it possible that the proof in support of a given charge might be so clear that argument of its legal insufficiency might not be helpful? Does that

—Tr. Tr. 6048—

strike you as possible as a theoretical concept?

Defendant Dennis: I would—

The Court: Or would you like me to illustrate?

Defendant Dennis: I would prefer to conclude with the brief remarks which I have and then to comment—

The Court: I would like to put the thought in your mind and, you see—

Defendant Dennis: —on the question—

The Court: You see, you charge this with being a mockery of justice, and I understand that, of course, you are not familiar with these legal matters, that things strike you in a way that they might not strike experienced people.

Now, let us suppose, for example, that a man was charged with murder in the first degree, and there was proof that the defendant had a grudge against the man who was killed, and that he went to a store and bought a revolver and bought some ammunition; and then he went and hid in this man's house and, as the man came home, he shot him. And then, when those proofs come out at the trial, the lawyer for the defendant says, "Now, I want to have a week to prepare arguments here. I don't want to make any motions now because I am not ready now."

Are you prepared to admit that in that case the Judge would be justified in saying, "Now, go ahead

—Tr. Tr. 6049—

and make your motion right away and I will pass on it"?

Defendant Dennis: As your Honor well understands, there is no analogy between that hypothetical case that you referred to and this case, this concrete case.

The Court: You are here as a lawyer, Mr. Dennis.

Defendant Dennis: Yes.

The Court: By your own choice.

Defendant Dennis: Yes. I would like to present my point of view here.

The Court: When you begin talking about a mockery of justice and all that, you know, you cannot expect me to sit here like a bump on a log and hear you call me names without saying anything. I don't like to do that.

You go ahead now and call me some more names.

. . . . . .

—Tr. Tr. 6054—

. . . . . .

Mr. Crockett: —I assume perhaps correctly that it would be to no avail to ask the Court to grant a reasonable time to prepare—

The Court: It would be without avail to ask me to give any time for the making of these motions. They are to be made this afternoon.

Mr. Crockett: That is why I made the assumption.

Colloquy

The Court: Well, you put that word "reasonable" in there. I don't the request for any time now is reasonable. That is why I denied the application.

Mr. Crockett: I think, your Honor, that the defendants, as well as myself and other counsel began this trial with certain illusions that have been shattered because of the prejudicial actions of the Court.

The Court: But you challenged me before we even started, so you had no illusions.

Mr. Crockett: That is true, but once 12 Americans sat in that box I thought we would get something approximating a fair trial in this court.

The Court: Now, Mr. Crockett, you seem on the

—Tr. Tr. 6055—

brink of making trouble for yourself. Not now but later.

Mr. Crockett: May I complete my statement?

The Court: Yes, but I think you had better be as temperate as you can under the circumstances.

Mr. Crockett: I suggest that this latest ruling of the Court merely confirms all of the prejudicial rulings that have been made in the course of this trial. I suggest that during the course of this trial it has actually been possible and I have heard spectators making the Court's rulings before the Court himself made the ruling.

The Court: It is very interesting.

Mr. Crockett: Because the Court's bias was so obvious that it was possible—

The Court: That is an insulting comment you are making, Mr. Crockett, a very insulting comment.

Mr. Crockett: I have no desire to insult the Court.

The Court: I think you do. I think you do have.

Mr. Crockett: What I as a member of the bar have observed transpiring here in a United States Federal District Court—

The Court: I have said and I repeat nothing you men can do can goad me into doing something that

—Tr. Tr. 6056—

will lead to the breaking up of this trial. I expect not only what you are doing now but worse things to happen in the weeks to come, but I hope that we will get past them without undue difficulty, but I think I know just what you are up to now, so I think you better try not to make it any more virulent than you feel you have to with your present temper.

Mr. Crockett: There is no intention to goad the Court. I think, however, that the Court is mindful of the fact that prior to this trial we requested a bill of particulars that would enable us to prepare our defense. Because of the denial of that bill of particulars it was impossible for us to complete the preparation of our defense before the Government began putting on its testimony. As a result it was necessary for two and sometimes three of the counsel for the defense to stay away from court in order to prepare the defense.

The Court: Is that what you have been doing?

Mr. Crockett: During this entire week I have been out working on the defense of this case. I have also been trying to go through this multitude of exhibits and immaterial and irrelevant evidence that was offered by the Government that have been admitted trying to find out what the case was all about,

Colloquy

—Tr. Tr. 6057—

The record has gone to over 6000 pages and there are more than 300 exhibits, and in the face of that type of record we are expected in one and a half hours to make separate motions on behalf of these defendants.

The Court: I think the proof is very clear. The reason I think that I don't believe that more time should be allowed is that the proof that has been adduced is of such a character that I am at a loss to know what you can possibly argue as a ground for claiming that the Government has not made out a prima facie case. The matters of constitutionality of the statute have already been argued. True they may be reargued when the case is closed and all the evidence is in and the question is reconsidered in view of all that proof. The matter of a bill of particulars was argued before Judge Hulbert and argued before me and reargued again. Now the only question of substance I see is whether the Government has made out a prima facie case, and frankly, as I have said before here, the evidence is of such a character that I am at a loss to see what you lawyers for the defense can argue in support of a motion for dismissal or for acquittal as a matter of law. But you do not choose apparently to get down to that, but prefer to talk about other matters. Now that is your concern.

—Tr. Tr. 6058—

Mr. Crockett: Now the statement which the Court has just made I submit is characteristic of the manner in which you have conducted this trial.

The Court: I have listened to you—

Mr. Crockett: But, your Honor—

The Court: Don't try to shout me down.

Defendant Winter: May I inquire whether your Honor's threats against my attorney are intended to deprive me of counsel in this trial? That is the effect it has.

The Court: I will make no further comment, Mr. Winter.

Defendant Winter: It seems that is what the Court is up to. My attorney is seeking to speak as is his right. The Court is threatening—

The Court: The Court is not threatening him at all. However, I think the best thing for me to do is to have a five-minute recess, as I did before, when this started.

. . . . . .

—Tr. Tr. 6219—

New York, May 23, 1949

. . . . . .

The Court: Is this International Labor Defense something that is a matter more or less of common knowledge, or is this going to introduce a controversial feature here. I do not want to multiply issues and have the trial go on forever.

Mr. Sacher: That isn't—

The Court: I just do not happen to know what this International Labor Defense is. It may be something that will turn out to prolong the trial unnecessarily.

Mr. Sacher: Why, your Honor, I have been with this witness for less than 50 minutes and we are talking about prolonging the trial.

The Court: Yes.

Mr. Sacher: I am directing these questions for one purpose and one purpose only, and that is to—

—Tr. Tr. 6220—

The Court: Do you know what I asked you?

Mr. Sacher: Yes.

The Court: Or have you forgotten?

Mr. Sacher: Yes, I know what your Honor asked me.

The Court: You don't seem to be responsive.

Mr. Sacher: I know, but to be interrupted with a statement when I have had the witness on the stand for 50 minutes, to talk about prolonging the trial—

The Court: Now don't start that, Mr. Sacher, because it is just disagreeable here for everybody. It doesn't help you or your client much. Now please don't do that.

Mr. Sacher: Very well, your Honor.

The Court: You know, you have to have some minimum respect for the Court.

Mr. Sacher: Well, I do have respect for the Court; of course, I do.

The Court: Well, you wouldn't speak that way if you did.

Mr. Sacher: Now if the Court please, the purpose of introducing this evidence in regard to the International Labor Defense is—

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—Tr. Tr. 6269—

New York, May 24, 1949

* * * * *

Q. Will you please tell us of the circumstances in which you were arrested? A. There was a mass meeting in front of the County Court House in Warren, Ohio, during the first week of March 1933. I know it was the day before President Roosevelt made his first inaugural address; that is how I recall it. I was the scheduled speaker at that meeting. The purpose of the meeting was to bring about an increase in the relief rates in the County, and also to ask for unemployment and social insurance. I began to speak and I said—

Mr. McGohey: I object to the speech, your Honor.

The Court: Sustained.

A. I never was able to make the speech.

The Court: Then it will be easy to omit it.

Mr. Gladstein: If your Honor please, the fact

—Tr. Tr. 6270—

that the witness wasn't permitted to make the speech some years ago is no reason why he shouldn't at least be permitted to state the circumstances.

The Court: I have ruled out the speech. He says there was no speech, so there is nothing left to discuss.

Q. Will you please describe what happened at that time, Mr. Gates? A. I uttered one word and then two policemen—one clapped his hand over my mouth and the other

grabbed me and they took me through the courthouse, out through the other end and into the County jail across the street.

Q. Was any charge placed against you? A. Yes, there was an ancient ordinance they dug up which stated that I was accused of making a loud noise without a permit.

Q. Did you defend yourself on that charge? A. I did.

Q. Were you represented by counsel? A. I was but I chose to defend myself at the trial.

Q. What was that? A. I put up a terrific defense but the judge ruled against me. I was sentenced to $25 and costs or 30 days in jail.

Q. And what did you do in connection with that judgment? A. I appealed the case.

Q. I take it that on this occasion you engaged a lawyer? A. I did not hear you.

Q. I say, that on the appeal you engaged a lawyer?

—Tr. Tr. 6271—

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you engage a lawyer—

Mr. McGohey: Objection.
The Court: Sustained.

Q. —on the appeal?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Were you ever called upon after you appealed to pay the fine or serve a sentence?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: Just a moment, your Honor. May—

The Court: I don't want any argument, Mr. Sacher.

Mr. Sacher: Can't we have the facts?

The Court: You are not going to get this fact. I have sustained the objection to it. I don't want any discussion.

Mr. Gladstein: May I interrupt, your Honor, to object to the Court's ruling that prevents the establishment by testimony of the ultimate outcome of this matter, and I submit that a strange contrast is afforded by the Court's insistence, for example, to which we have no objection—but the Court's over-insistence on pursuing to its final conclusion

—Tr. Tr. 6272—

the arrest and conviction of the witness Nicodemus, concerning which it would seem to me—

The Court: You will please desist from further argument, Mr. Gladstein.

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—Tr. Tr. 6285—

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Q. Mr. Gates, you have used a few terms in your statement which it may perhaps require some elucidation. You referred to private ownership of means of production under what you called capitalism and the socialist or public ownership of the means of production under what you call socialism. Would you be good enough to tell the jury what is meant by the term "means of production"?

The Court: That is, what it meant to him?

Mr. Sacher: Yes, what it meant to him.

A. Means of production were the factories, the mines and the mills.

Q. And is that the commonly understood meaning of the term "means of production" in economics generally? A. Yes.

Mr. McGohey: I object.

—Tr. Tr. 6286—

The Court: I sustain the objection.

Mr. Sacher: It is—

The Court: Strike the answer.

Mr. Sacher: —on the ground the witness is not qualified, your Honor? Because you will recall, your Honor—

The Court: I have sustained the objection, Mr. Sacher.

Mr. Sacher: May I not know why so I may correct it if it is correctible?

The Court: I have no comment to make.

Mr. Sacher: You helped Mr. Gordon one day and I would like a little help too.

The Court: Mr. Sacher, you will please desist from this sort of thing.

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—Tr. Tr. 6418—

New York, May 25, 1949

* * * * *

Q. Did the Communist Party during the period covered by the indictment ever teach that there is any fascism in the United States at all?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did the Communist Party—

The Court: I will allow that. I will change that ruling. I will allow that question.

Mr. McGohey: Well, the point was, your Honor, that it was repetitious.

Mr. Sacher: Well, I am just leading up to something.

The Court: Well, I will allow it.

A. The Government of the United States is not—

The Court: No; listen to the question.

—Tr. Tr. 6419—

Q. Did the Communist Party during the period covered by the indictment teach that there was any fascist, any fascist government in the United States—

The Court: No; read the question.

Q. —or any fascism in the United States?

The Court: No. Let us not change it around. Read the question, Mr. Reporter.

(Question read as follows: "Did the Communist Party during the period covered by the indictment ever teach that there is any fascism in the United States at all?")

The Witness: That is what I was proceeding to answer.

The Court: Well, you can say yes, or you can say no.

The Witness: I can't give that kind of an answer.

The Court: Very well; then ask the next question. He cannot say whether they ever did or not without an explanation.

Mr. Gladstein: No, your Honor. He said he cannot answer yes or no to that question.

The Court: That's what I said.

Mr. Gladstein: That is a lot different than what your Honor said. If your Honor will give him an opportunity to—

—Tr. Tr. 6420—

The Court: Do stop that deliberate tone, Mr. Gladstein. It is—

Mr. Gladstein: I assign that—

The Court: I said the very same thing that the witness said. He couldn't say yes and he couldn't say no without an explanation. There is no difference between the way you put it and the way I put it.

Mr. Gladstein: I assign your Honor's remarks as—

The Court: You can assign it any way you want to.

Mr. Gladstein: I assign that remark.

The Court: Fine. Sit down and stop now.

Mr. Gladstein: And in sitting down I assign that last remark.

The Court: That's fine, fine.

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—Tr. Tr. 6459—

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Q. And did you intend to express in that article your views of American democracy at that time?

Mr. McGohey: Objection, your Honor.

The Court: Sustained.

Mr. Sacher: I offer the article in evidence (hand-

—Tr. Tr. 6460—

ing to Mr. McGohey).

Mr. McGohey: 19 to 21, you said?

Mr. Sacher: Yes.

Mr. McGohey: This is objected to, your Honor (handing to the Court).

The Court: Sustained.

Mr. Gladstein: Your Honor, may I ask that the Government be required to state the grounds for its objection to a document that this man wrote twelve years ago before he ever knew that there would be an indictment and when he expressed his political views on the very issues involved in this case? May I know what the legal ground is by which a man is prevented from showing his intentions, his state of mind—

Gates—Direct
Colloquy

The Court: You remember my instruction about these arguments?

Mr. Gladstein: I desire to ask the Court to require the Government to explode this mystery whereby with the mere words "I object" they can shut off the right of a man to show—

The Court: You may think that this matter of argument is helpful. It is certainly not helpful to me. Now you have requested, and you could have requested without those comments and that argument that the Government be required to state the

—Tr. Tr. 6461—

grounds of its objection. That application is denied.

Mr. Gladstein: Your Honor, we have been sitting here for months—

The Court: Now please don't start this argument over again.

Mr. Gladstein: May I—

The Court: I have no desire to hear it. If you have some motion, make it. If you have some objection, state it and I will rule on it.

Mr. Gladstein: Well, I do object to a ruling which prevents a man from summoning to his defense the deeds and the acts of his life committed long before there was any question about it—

The Court: I do not really think, Mr. Gladstein, you have any right to proceed with that form of argumentative matter when I have forbidden it. Now you have already got a very substantial record of disobedience here. You may have an additional record now if you choose to go on.

Mr. Gladstein: I have no desire to disobey the Court's admonitions.

The Court: But you have.

Mr. Gladstein: I do have a desire, your Honor, to bring before the jury the opening pages of the book—

The Court: Well, I think, Mr. Gladstein, this sort of argument is the very sort of thing that you are

—Tr. Tr. 6462—

not entitled to bring before the jury, and I forbid it.

Now as I said before, if you choose to pile up the record of these things against yourself, you may go on.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: Otherwise you will sit down.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: Very well.

. . . . . .

—Tr. Tr. 6530—

New York, May 26, 1949

. . . . . .

Q. Now, Mr. Gates, I direct your attention to the next to the last sentence in the righthand column on page 997, which reads as follows:

"Victory over Nazism can no longer be achieved as easily and cheaply and with such comparatively little sacrifice as it could have been when the fate of Spain and Czechoslovakia were at stake."

And I ask you what meaning those words had for you and the other members of the Communist Party at the date of the publication of this article?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: I don't see the difference, if I may say so, between—

The Court: I don't want to argue, Mr. Sacher. Please don't get that started again.

Q. I read you the next sentence on page 997, which is right at the bottom of the page:

"The Nazis, aided by the Municheers—M-u-n-i-c-h-e-e-r-s—have become the most menacing machine bent on world conquest the world has ever seen."

And I ask you what the expression "Munichеers" in that sentence meant to you and the other members of the Com-

—Tr. Tr. 6531—

munist Party at the time of the publication of this article?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: Well, is it on the theory that everybody knows who "Munichеers" are, your Honor? I submit that this is important on the question of intent.

The Court: Mr. Sacher, I don't desire argument. If your question is right, then you are right and I am wrong. Now, I have to decide here, and I have

sustained the objection. I don't want argument over every question the way you seem disposed to do.

Mr. Gladstein: Your Honor, may I ask the Court to inquire of Mr. McGohey what legal grounds, if any, he urges in support of his objection to this question?

The Court: You have in effect asked me to do that and I refuse to do so.

Mr. Gladstein: Your Honor refuses?

The Court: I do.

By Mr. Sacher:

Q. Mr. Gates, I invite your attention to the next sentence after this one, which referred to the Munichеers, which reads as follows:

"Past sins must be paid for now."

And I ask you what meaning those words had to you —Tr. Tr. 6532— and other members of the Communist Party at the time of the publication of your article?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: I don't think there is a soul in this courtroom who knows what the words "Past sins must be paid for now" mean unless this witness is permitted to say what he was talking about.

The Court: Now—

Mr. Sacher: And what is the use of laying it before the jury?

The Court: —you realize that your action now is deliberately contemptuous?

Mr. Sacher: It is not deliberately contemptuous, I am just bewildered, your Honor.

The Court: I have told you not to argue these matters, and I really am quite at a loss to understand why you so flagrantly and deliberately and persistently disobey my instruction. Probably it is because I don't shout at you but I don't like to do that.

—Tr. Tr. 6570—

Q. Mr. Gates, I show you Defendants' Exhibit QQQQQ for identification, and ask you whether you were one of the

—Tr. Tr. 6571—

authors of that document (handing)? A. Yes, I was.

Q. When and where was it written? A. It was written in Spain on the occasion of the July 4th Anniversary, 1938.

Q. When you say the July 4th Anniversary, what anniversary do you mean? A. The American July 4th Anniversary.

Q. The anniversary of American Independence? A. Yes.

Mr. Sacher: I offer QQQQQ in evidence (handing).

Mr. McGohey: This is objected to, your Honor (handing to Court).

The Court: Objection sustained.

Mr. Sacher: If it is on the question of relevancy, your Honor, that is one thing, but if it is a question of foundation—

The Court: No, I am not going to get into the war in Spain.

Mr. Sacher: I take it then that it is not on the question of laying a technical foundation of competency, so that I won't waste time trying to lay that sort of a foundation.

The Court: I can't imagine that that document would be admissible.

Mr. Gladstein: Your Honor, may I ask the ques-

—Tr. Tr. 6572—

tion? Because I will have occasion to—

The Court: Well, you generally ask them; go ahead.

Mr. Gladstein: Thank you. I will have occasion to produce witnesses and defendants who will testify as part of the testimony that I desire to bring before the jury, so that the jury can judge the intent—

The Court: Well, you see, you like to make these little arguments and I suppose I might just as well relax and let you go ahead. You have done so repeatedly. Now I think I understand what you desire to argue.

Mr. Gladstein: Then let me go ahead since your Honor says you will.

The Court: Well,—

Mr. Gladstein: One of the things I want to know is this: I have always operated on the theory that a man's past state of mind and intention is best